

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2336

Introduced by Assembly Member Grove

February 21, 2014

An act to amend Section ~~124180~~ of 2253 of the *Business and Professions Code*, and to add Article 2.7 (commencing with Section 123470) to Chapter 2 of Part 2 of Division 106 of the *Health and Safety Code*, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 2336, as amended, Grove. ~~Public health: personal health care. Abortion: gender selection.~~

Existing law generally ensures the right of a woman to choose or obtain an abortion, but provides that the performance of an abortion is unauthorized under certain circumstances, including when the abortion is performed on a viable fetus and continuation of the pregnancy posed no risk to the life or health of the pregnant woman, as specified.

This bill would enact the Prenatal Nondiscrimination Act. The bill would prohibit a person from intentionally performing or attempting to perform an abortion with knowledge that the pregnant woman is seeking the abortion on account of the gender of the unborn child. The bill would provide for injunctive relief, civil damages, and civil fines for a violation of this provision. The bill would also prohibit the public disclosure of the woman's identity, unless she consents to that disclosure.

~~Existing law authorizes the State Department of Public Health to conduct the Adolescent Family Life Program to serve certain specified~~

~~functions, including, but not limited to, ensuring that pregnant adolescents receive comprehensive continuous prenatal care in order to deliver healthy babies.~~

~~This bill would make technical, nonsubstantive changes to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. This act shall be known and may be cited as the*
2 *Prenatal Nondiscrimination Act or PRENDA.*

3 *SEC. 2. Section 2253 of the Business and Professions Code is*
4 *amended to read:*

5 2253. (a) ~~Failure~~ *Except as otherwise prohibited by Article*
6 *2.7 (commencing with Section 123470) of Chapter 2 of Part 2 of*
7 *Division 106 of the Health and Safety Code, failure to comply*
8 *with the Reproductive Privacy Act (Article 2.5 (commencing with*
9 *Section 123460) of Chapter 2 of Part 2 of Division 106 of the*
10 *Health and Safety Code) constitutes unprofessional conduct.*

11 (b) (1) Except as provided in paragraph (2), a person is subject
12 to Section 2052 if he or she performs an abortion, and at the time
13 of so doing, does not have a valid, unrevoked, and unsuspended
14 license to practice as a physician and surgeon.

15 (2) A person shall not be subject to Section 2052 if he or she
16 performs an abortion by medication or aspiration techniques in
17 the first trimester of pregnancy, and at the time of so doing, has a
18 valid, unrevoked, and unsuspended license or certificate obtained
19 in accordance with the Nursing Practice Act (Chapter 6
20 (commencing with Section 2700)) or the Physician Assistant
21 Practice Act (Chapter 7.7 (commencing with Section 3500)), that
22 authorizes him or her to perform the functions necessary for an
23 abortion by medication or aspiration techniques.

24 (c) In order to perform an abortion by aspiration techniques
25 pursuant to paragraph (2) of subdivision (b), a person shall comply
26 with Section 2725.4 or 3502.4.

27 *SEC. 3. Article 2.7 (commencing with Section 123470) is added*
28 *to Chapter 2 of Part 2 of Division 106 of the Health and Safety*
29 *Code, to read:*

Article 2.7. *Abortion: Gender Selection and Prenatal
Nondiscrimination*

123470. *For purposes of this article, the following definitions shall apply:*

(a) *“Abortion” means the use or prescription of any instrument, medicine, drug, or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus who died as the result of natural causes in utero, accidental trauma, or a criminal assault on the pregnant woman or her unborn child.*

(b) *“Attempt to perform an abortion” means to do or omit to do anything that, under the circumstances as the actor believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in an abortion. Substantial steps include, but are not limited to, agreeing with an individual to perform an abortion on that individual or on some other person, regardless of whether the term “abortion” is used in the agreement, and regardless of whether the agreement is contingent on another factor such as receipt of payment or a determination of pregnancy; or scheduling or planning a time to perform an abortion on an individual, regardless of whether the term “abortion” is used, and regardless of whether the performance is contingent on another factor such as receipt of payment or a determination of pregnancy. This definition does not require that an abortion procedure actually be initiated for an attempt to occur.*

123471. *A person shall not intentionally perform or attempt to perform an abortion with knowledge that the pregnant woman is seeking the abortion on account of the gender of the unborn child.*

123472. (a) (1) *Any of the following persons may maintain an action against the person who performed an abortion in violation of Section 123471:*

(A) *The person upon whom the abortion was performed, regardless of that person’s age.*

(B) *The father of the unborn child who was the subject of the abortion that was performed.*

1 (C) If the person upon whom the abortion was performed is a
2 minor, a parent, legal guardian, or grandparent of the person.

3 (2) No person shall be estopped from recovery in such an action
4 on the ground that either the plaintiff or the person upon whom
5 the abortion was performed gave consent to the abortion.

6 (b) If judgment is rendered in favor of the plaintiff in any action
7 described in this section, the person may recover ten thousand
8 dollars (\$10,000) in punitive damages and treble actual damages.
9 The court shall also award reasonable attorney's fees in favor of
10 the plaintiff against the defendant. If judgment is rendered in favor
11 of the defendant and the court finds that the plaintiff's suit was
12 frivolous and brought in bad faith, the court may award reasonable
13 attorney's fees in favor of the defendant against the plaintiff. For
14 purposes of this section, the term "frivolous" has the same meaning
15 as provided in Section 128.5 of the Code of Civil Procedure.

16 (c) (1) A cause of action for injunctive relief against any person
17 who has knowingly violated this section may be maintained by the
18 female upon whom an abortion was performed or attempted to be
19 performed in violation of this section, by a person who is the
20 spouse, parent, sibling, or guardian of, or a current or former
21 licensed health care provider of, the female upon whom an abortion
22 has been performed or attempted to be performed in violation of
23 this act, by or a prosecuting attorney with appropriate jurisdiction,
24 or by the Attorney General. The injunction shall prevent the
25 abortion provider from performing further abortions in violation
26 of this section in this state.

27 (2) A person who knowingly violates the terms of an injunction
28 issued in accordance with this section shall be subject to civil
29 contempt, and shall be fined ten thousand dollars (\$10,000) for
30 the first violation, fifty thousand dollars (\$50,000) for the second
31 violation, one hundred thousand dollars (\$100,000) for the third
32 violation, and for each succeeding violation an amount in excess
33 of one hundred thousand dollars (\$100,000) determined by the
34 court to be an amount sufficient to deter future violations. The
35 fines shall be the exclusive penalties for the contempt. Each
36 performance or attempted performance of an abortion in violation
37 of the terms of an injunction is a separate violation. These fines
38 shall be cumulative. However, no fine may be assessed against the
39 woman on whom an abortion is performed or attempted.

1 (d) Any pleading filed in a proceeding or action brought
2 pursuant to this section shall ensure that the identity of any woman
3 upon whom an abortion is performed or attempted is not publicly
4 disclosed and that all parties substitute a pseudonym for the true
5 name of the woman and other parties as necessary to protect the
6 woman's privacy, unless she gives her written consent to the
7 disclosure of her identity. Absent that written consent, the court,
8 upon motion or sua sponte, shall issue orders to the parties,
9 witnesses, and counsel, and shall direct the sealing of the record
10 and exclude individuals from courtrooms or hearing rooms, to the
11 extent necessary to safeguard the woman's identity from public
12 disclosure.

13 123473. The provisions of this article are severable. If any
14 provision of this section or its application is held invalid, that
15 invalidity shall not affect other provisions or applications that can
16 be given effect without the invalid provision or application.

17 SECTION 1. ~~Section 124180 of the Health and Safety Code~~
18 ~~is amended to read:~~

19 ~~124180. (a) The department may conduct the Adolescent~~
20 ~~Family Life Program to ensure that pregnant adolescents receive~~
21 ~~comprehensive continuous prenatal care in order to deliver healthy~~
22 ~~babies; to establish networks within regions to provide to pregnant~~
23 ~~and parenting teens and their children necessary services including~~
24 ~~medical care, psychological and nutritional counseling, maternity~~
25 ~~counseling, adoption counseling, academic and vocational~~
26 ~~programs, and day care; to provide a continuous case manager to~~
27 ~~each family unit; and to maintain a database to measure outcomes~~
28 ~~of adolescent pregnancies. Specific procedures to operate this~~
29 ~~program will be defined and carried out through standards and~~
30 ~~guidelines established by the department.~~

31 ~~(b) Grant funds shall not be used for essential services to~~
32 ~~pregnant adolescents or schoolage parents unless the services are~~
33 ~~not available in the county or are insufficient to meet the basic~~
34 ~~needs of the population to be served; in that case, funds may be~~
35 ~~used for essential services only as set forth in the approved grant~~
36 ~~application. Grant funds shall not be expended for abortions,~~
37 ~~abortion referrals, or abortion counseling.~~